

U.S. Patent Application Serial No. 10/594,449  
Response filed December 17, 2008  
Reply to OA dated August 19, 2008

**REMARKS**

Claims 1-12 are pending in this application. Claims 1 and 2 are amended herein. Upon entry of this amendment, claims 1-12 will be pending. Entry of this amendment and reconsideration of the rejections are respectfully requested.

No new matter has been introduced by this Amendment. Support for the amendments to the claims is discussed below.

**Claims 1-12 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. (Office action p. 3)**

The rejection is overcome by the amendments to claims 1 and 2.

This rejection concerns the claim amendment made on April 25, 2008, in which claim 1 was amended to recite "a modification of SEQ ID NO: 2 in which from one to seven amino acids have been deleted, added, or substituted." The Examiner states that: "There is no written support for other gB sequences containing 2 or 7 amino acid changes or for gB sequences containing 1 or 3-6 amino acids."

In the amendment to claim 1, the phrase "or encodes a modification of SEQ ID NO: 2 in which from one to seven amino acids have been deleted, added, or substituted" has been deleted. Claim 2 has similarly been amended to delete the recitation of "or a modification of SEQ ID NO: 4 in which from one to seven amino acids have been deleted, added or substituted." The issue of

U.S. Patent Application Serial No. 10/594,449  
Response filed December 17, 2008  
Reply to OA dated August 19, 2008

whether such modifications find written support in the specification is now moot in view of these amendments.

Claim 1, as amended, therefore recites a herpesvirus that has a DNA that encodes the polypeptide of SEQ ID NO: 2 (i.e., without modification). Claim 2 recites a herpesvirus that requires both a DNA encoding the amino acid sequence of SEQ ID NO: 4 (i.e., without modification), linked to the DNA encoding the polypeptide of SEQ ID NO: 2.

Reconsideration of the rejection is therefore respectfully requested.

**Claims 1-12 remain rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. (Office action p. 4)**

The rejection is overcome by the amendments to claims 1 and 2.

Although stated as a separate rejection from the above rejection under 35 U.S.C. 112, first paragraph, Applicant submits that the issues in this rejection appear to be the same as those in the above rejection.

In the rejection, the Examiner states:

"The claims are drawn to, inter alia, a recombinant herpesvirus that is not infectious laryngotracheitis virus, wherein the recombinant herpesvirus has a DNA that encodes the polypeptide of SEQ ID NO: 2, or encodes a modification of SEQ ID NO: 2 in which from one to seven amino acids have been deleted, added or substituted, ...."

The Examiner then discusses the disclosure on pages 4 and 5 of the specification that "one or a plurality of amino acids have been deleted, added or substituted in said polypeptide." The Examiner

U.S. Patent Application Serial No. 10/594,449

Response filed December 17, 2008

Reply to OA dated August 19, 2008

states: "Therefore, there is a written description for the 632 and SA2 gB sequences. However, there is no guidance in the specification for making other amino acid substitutions, deletions or additions within SEQ ID NO: 2."

That is, in this rejection, as is the preceding rejection, the issue appears to be support for the claim recitation reciting "from one to seven amino acids have been deleted, added, or substituted." In the present amendment to claims 1 and 2, this recitation is deleted, and the claims, as amended, are fully supported by the specification.

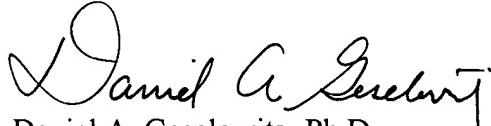
If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the applicants' undersigned agent at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

U.S. Patent Application Serial No. **10/594,449**  
Response filed December 17, 2008  
Reply to OA dated August 19, 2008

In the event that this paper is not timely filed, the applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

KRATZ, QUINTOS & HANSON, LLP



Daniel A. Geselowitz, Ph.D.  
Agent for Applicants  
Reg. No. 42,573

DAG/xl

Atty. Docket No. **060734**  
Suite 400  
1420 K Street, N.W.  
Washington, D.C. 20005  
(202) 659-2930



**23850**

PATENT & TRADEMARK OFFICE

Enclosure: Petition for Extension of Time

H:\060\060734\Response in re FOA of 08-19-08